

ORIGINAL

FILED

March 25 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0042

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM CYRIL DALTON,

Defendant and Appellant.

FILED

MAR 25 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**MOTION TO STAY APPEAL  
AND REMAND TO DISTRICT COURT**

COMES NOW, Jennifer Hurley, Assistant Appellate Defender, and moves this Court to stay the above-captioned appeal and remand the case to the district court to allow William Dalton (Dalton) to file a motion to modify the written judgment to conform to the oral pronouncement of sentence, pursuant to Mont. Code Ann. § 46-18-116(2).

Oral pronouncement of sentence is the legally effective and valid final judgment. It controls in situations of conflict between oral pronouncement and the written judgment. *State v. Malloy*, 2004 MT 377, ¶ 16, 325 Mont. 86, 103 P.3d 1064. Under Mont. Code Ann. § 46-18-116(2), if a written judgment and oral pronouncement of sentence conflict, the defendant may, within 120 days after the filing of the written judgment, request that the district court modify the written judgment to conform to the oral pronouncement.

Dalton was sentenced to a thirteen-month commitment to the Department of Corrections, with a recommendation that he complete WATCH treatment. (11/13/09 Tr. at 15, attached as Exhibit A.) He was also given a four-year suspended sentence with various conditions. (11/13/09 Tr. at 15.) The written Judgment and Order in the instant case includes the following provision: "Any suspended portion of this sentence may be revoked if Defendant fails to successfully complete the WATCH program due to the Defendant's own actions." (D.C. Doc. 44 at 4, attached as Exhibit B.) The oral pronouncement of sentence contained no such provision making the four-year suspended sentence revocable on this basis. Dalton will argue to the district court that the provision must be struck from the written judgment in order to conform to the oral pronouncement of the sentence.

The written judgment was filed on December 1, 2009. Thus, Dalton has until March 31, 2010, to file a motion in district court seeking to modify the written judgment to conform to the oral pronouncement of sentence. Accordingly, Dalton respectfully requests this Court enter an order staying the appeal and remanding for that purpose.

Opposing counsel has been contacted concerning this motion and does not object to an order staying the appeal and remanding to district court.

Respectfully submitted this 25<sup>th</sup> day of March, 2010.

OFFICE OF THE STATE PUBLIC DEFENDER  
Appellate Defender Office  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

By:

Jennifer A. Hurley  
JENNIFER A. HURLEY  
Assistant Appellate Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing

Motion to Stay Appeal and Remand to District Court to be mailed to:

STEVE BULLOCK  
Montana Attorney General  
MARK MATTIOLI  
Assistant Attorney General  
P.O. Box 201401  
Helena, MT 59620-1401

DENNIS PAXINOS  
Yellowstone County Attorney  
P.O. Box 35025  
Billings MT 59107-5025

WILLIAM DALTON 3004076  
WATCH – West  
P.O. Box 6  
Warm Springs, MT 59756

DATED: \_\_\_\_\_

# EXHIBIT A

1       it really shouldn't be an issue for you --

2               THE DEFENDANT: That's true.

3               THE COURT: -- at all. And so it appears to me also  
4       that you have not had a DUI since 2000, which we can all  
5       speculate whether you are just driving around drunk and nobody  
6       is catching you or whether or not you actually use some  
7       judgment and don't drive at times.

8               But at any rate, it does appear to me that you have  
9       an alcohol problem, and the totality of the circumstances  
10      requires that I do impose a 13-month commitment to the  
11      Department of Corrections. I will certainly recommend you for  
12      the WATCH Program.

13              And I -- what I am going to do is follow that with  
14      four years of probation as recommended by the probation  
15      officer.

16              I would hope, Mr. Dalton, that given your age, it  
17      would be a good time to put this whole matter behind you.

18              THE DEFENDANT: I agree.

19              THE COURT: Take advantage of the treatment. It  
20      appears to me that if you could get rid of your alcohol  
21      problem, that you really wouldn't have any other issues going  
22      on in your life.

23              THE DEFENDANT: That is true.

24              THE COURT: So I will wish you the very best of  
25      luck.

# EXHIBIT B

# 09-15556

CLERK OF THE  
DISTRICT COURT  
JANALYUESSIG

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DEPUTY 44

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

STATE OF MONTANA,  Plaintiff,  vs.  WILLIAM CYRIL DALTON, Defendant.	CAUSE NO. DC 09-0090  Judge Ingrid Gustafson  <b>JUDGMENT AND ORDER SUSPENDING</b>
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On the 13th day of November, 2009, Defendant appeared in District Court for initial arraignment.

On the 8th day of September, 2009, Defendant and counsel appeared before the Court for a Trial by Jury. A proper verdict of Guilty was rendered by the jury on that date.

On the 13th day of November, 2009, Defendant appeared before the Court with Gregory Paskell, his attorney, for sentencing.

The Court inquired whether Defendant had any legal cause to show why judgment should not be pronounced. Defendant and counsel offered no legal cause.

IT IS ORDERED that on COUNT I: DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (FELONY) the said Defendant be committed to the Department of Corrections under §§ 61-8-731 or 61-8-732 and 46-18-201, MCA, for THIRTEEN (13) MONTHS. Upon Defendant's successful completion of a residential alcohol treatment program operated or approved by the Department of Corrections, the remainder of the THIRTEEN (13) MONTH sentence must be served on probation. Defendant will provide a written release of information from all treatment providers.

IT IS FURTHER ORDERED that on COUNT I: DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (FELONY) Defendant is sentenced to the Department of Corrections for an additional FOUR (4) YEARS all of which is SUSPENDED and runs CONSECUTIVELY to the term imposed above.



IT IS FURTHER ORDERED that Defendant is placed on probation with the following conditions:

1. The Defendant be placed under the supervision of the Department of Corrections, subject to all rules and regulations of the Adult Probation & Parole Bureau.
2. The Defendant must obtain prior approval from his supervising officer before taking up residence in any location. The Defendant shall not change his place of residence without first obtaining written permission from his supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from his supervising officer or the officer's designee before leaving his assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his supervising officer, the Defendant must inform his employer and any other person or entity, as determined by the supervising officer, of his status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his supervising officer or designee when directed by the officer.
6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
7. The Defendant must obtain permission from his supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.
9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.
10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.
11. The Defendant is prohibited from gambling.

12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.
13. The Defendant shall pay to the DOC a \$50 fee at the time that the PSI report is completed unless the court determines that the Defendant is not able to pay the fee within a reasonable time per §46-18-111, MCA. The Defendant is to submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.
14. The following fees are statutorily mandated:
  - a. Supervision fees (§46-23-1031, MCA) of \$21 per month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA).
  - b. Surcharge of the greater of \$20 or 10% of the fine for each felony offense.
  - c. Surcharge of \$15 for each misdemeanor.
  - d. Surcharge of \$50 for each misdemeanor or felony.
  - e. \$10.00 per count for a court information technology fee (§3-1-317, MCA).
15. All Defendants convicted of a felony offense must submit to DNA testing as required by §44-6-103, MCA.
16. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.
17. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.
18. The Defendant will not enter any bars.
19. The Defendant will not enter any casinos.
20. The Defendant will not associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer. The Defendant will not associate with persons as ordered by the court or BOPP.
21. The Defendant, if financially able, as a condition of probation, shall pay for the cost of imprisonment, probation, and alcohol treatment for the length of time he is imprisoned, on probation, or in alcohol treatment.
22. The Defendant shall not operate a motor vehicle unless authorized by the Probation & Parole Officer. If the Officer authorizes the Defendant to drive, he will not drive unless the vehicle is equipped with an ignition interlock system.
23. The Defendant will enter and remain in an aftercare treatment program for the entirety of the probationary period. The Defendant, if financially able, will pay for the cost of out-patient alcohol treatment during the term of probation.
24. The Defendant will submit to random or routine drug and/or alcohol testing.
25. Pursuant to this criminal cause, the Defendant shall receive credit for time spent in the Yellowstone County Detention Facility at Billings, Montana, for the 17th day of February 2009 through the 20th day of February 2009.

IT IS RECOMMENDED that Defendant be considered for placement at the Warm Springs Addictions Treatment and Change Program (WATCH). Any suspended portion of this sentence may be revoked if Defendant fails to successfully complete the WATCH program due to the Defendant's own actions.

If Defendant fails to comply with any of the above-conditions, the Court will: issue a bench warrant of arrest, apprehend Defendant and require him to appear before the Court for further proceedings.

Sentencing was imposed for the following reasons:

1. The Court considered the contents and recommendations of the pre-sentence report along with any corrections/modifications made at the sentencing hearing.

2. The Court considered Defendant's statement presented at the sentencing hearing.

3. The Court considered the following criteria for sentencing: non-violent circumstances/facts of the offense; Defendant's age; Defendant's employment; Defendant pled guilty and accepted responsibility; amount of pre-trial incarceration/detention time served; recommendations/arguments of counsel; and, Defendant's criminal history consisting of the prerequisite number of prior DUI convictions making this a felony conviction which indicates extremely serious chemical dependency issues.

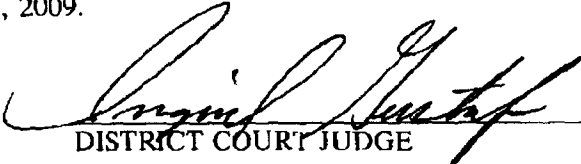
4. Given the above-stated reasons, the Court imposed a suspended sentence for a term long enough to keep Defendant away from alcohol, to change his attitude toward alcohol, to monitor Defendant's sincerity in proving to this Court that he will successfully address his substance addiction.

The Bond, if any, is exonerated.

If the written judgment differs from the sentence the Judge pronounced orally, then the State or Defendant has only One Hundred Twenty (120) Days to contest the written judgment as set forth in § 46-18-116, MCA. If no party contests the written judgment within One Hundred Twenty (120) Days, the written judgment is presumed correct.

DONE In Open Court: the 13th day of November, 2009.

SIGNED this 30<sup>th</sup> day of November, 2009.

  
DISTRICT COURT JUDGE

CC: YCAO - Victoria Callender/wb  
YCSO - (C&O 09-07188)  
PROBATION & PAROLE  
DEFENSE COUNSEL - Gregory Paskell

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly  
served upon the parties or their counsel  
of record at their last-known address  
this 14 day of December, 2009.

By:

Gregory Paskell  
Judicial Assistant to the Honorable Ingrid Gustafson